IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

FIRST APPEAL NO.565 OF 2001

The State of Maharashtra (through)
the Commissioner of Police, Opposite)
Mahatma Phule Market, Bombay 400 001.).. Appellant

Versus

Smt.Sunanda Bhikaji Ghag)
N.R.Nagar, Behind Gaondevi Temple)
Near Diva Station, Diva (West) a)
District : Thane.).. Respondent

Mr.K.K.Tated, Assistant Government Pleader, for the Appellant.

Mr.A.D.Shetty for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 30TH JUNE 2005

ORAL JUDGMENT :

. The First Appeal is directed against the judgment and order dated 7th December 1996 of the Commissioner for Workmen's Compensation and Judge, 12th Labour Court, Mumbai in Application (WCA) No.490/8-49 of 1991. The Appellant has been directed to pay compensation to the Respondent amounting to Rs.59,868/- with 6% simple interest from 27th January 1990 till the date of the deposit. The Commissioner has also awarded penalty of Rs.14,967/- and costs of Rs.1000/- to the Respondent.

2. The husband of the Respondent one Bhikaji Ghag was employed as a Head Constable in Motor Transport Department of the Commissioner of Police and was required to drive police van. On 27th January 1990, while he was driving a police van along the Eastern Express Highway, he dashed against a stationery truck. He sustained serious injuries to his head, legs and hands. He was removed to L.T.M.G. Hospital, Sion where he succumbed to his injuries on the same day. The claim has been filed by the widow of the deceased. Respondent has contended in the claim application that she is entitled to workmen’s compensation since her husband had died on account of an accident arising out of and in the course of his employment.

3. The claim was opposed by the Appellant State Government on various grounds. The principle contention taken up by the Appellant is that the deceased was not a workman as defined in the Workmen’s Compensation Act, 1923 (hereinafter referred to as "the Act"); that the widow had already been paid family pension, gratuity and other benefits which were payable to the deceased workmen and hence she was not entitled to any further compensation. It was also pleaded in the Written Statement that the accident had occurred on account of the negligence of the deceased and, therefore, the

Appellant was not liable to make any payment to the claimant.

4. The Commissioner for Workmen’s Compensation recorded the evidence of the Respondent. Appellant chose not to examine any witness in support of their contentions. The Commissioner on an assessment of the evidence led before him, has awarded the aforestated amounts to the Respondent widow.

5. Mr.Tated, learned Assistant Government Pleader, submits that the police driver is not a "workman" as defined under Section 2(1)(n) of the Act. He further submits that the widow having been paid the family pension payable under the Maharashtra Civil Services (Pension and Gratuity) Rules is not entitled to any further amount as compensation. According to the learned Assistant Government Pleader, the impugned order amounts to double payment to the widow which is not envisaged under the Act.

6. The deceased was employed as a Driver on a vehicle which was used by the Police. There is no dispute that the deceased was driving the vehicle owned by the State. The deceased would thus fall within the purview of the term "workman" as defined in Section 2(1)(n)(c) of the Act. As held in the case of *State of*

Kerala vs. *Khadeeja Beevi*, **1988 II CLR H.C. 333**, a regular Government servant employed in the Forest Department can be considered as a "workman" within the definition of Section 2(1)(n) of the Act and is entitled to compensation under the Act. The deceased was engaged to drive the van owned by the Appellant to transport police constables for performing their routine work. The finding of the Commissioner that the deceased was a "workman" under the Act must, therefore, be accepted.

7. The Commissioner has recorded a finding that the State has not led any evidence to demonstrate that the vehicle was driven in a rash and negligent manner by the deceased or that the accident occurred on account of the negligence of the deceased. The Commissioner has, therefore, rightly held that the accident which has occurred during the course of and out of employment and was not due to any negligence on the part of the deceased.

8. The Commissioner has considered the contention of the State that the Respondent is not at all entitled to compensation under the Act because she has already received pension, gratuity under the service Rules applicable to the deceased. In my view, the Commissioner has rightly held that the payment of pension and gratuity would not disentitle the Respondent

from receiving compensation on account of the accident in which her husband succumbed to the injuries. Family pension and gratuity are concomitant with service or employment and are benefits which are available to the workman on his retirement or to his dependants upon his death. However, compensation payable to a workman under the Workmen's Compensation Act is payable only on account of an injury suffered by a workman arising out of and in the course of employment. The two payments, under the Workmen's Compensation Act and the Maharashtra Civil Services Rules, are not mutually exclusive and the Respondent is entitled to both the benefits.

9. In this view of the matter, Appeal fails and is dismissed. The amount deposited by the Appellant be paid over to the Respondent immediately.

10. In view of the dismissal of the Appeal, nothing survives in Civil Application No.5205 of 1998 and the same is disposed of accordingly.